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6 Attorneys for Defendant
LVNV Funding, LLC
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8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA

11 DANA PASQUALE,

12 Plaintiff,

13 vs.

14 LVNV FUNDING, LLC; WELTMAN,
WEINBERG & ROSS CO., LPA; and DOES 1
15 through 25, Inclusive,

16 Defendants.
17

Case No.: 13-cv-00322 PSG

**DEFENDANT LVNV FUNDING LLC'S
ANSWER TO COMPLAINT AND
DEMAND FOR JURY TRIAL**

Compl. Filed: November 30, 2012

Hon. Paul Singh Grewal

YU | MOHANDESI LLP

1 Defendant LVNV Funding, LLC (“Defendant”), for itself and for no other party, hereby
 2 answers Plaintiff Dana Pasquale’s Complaint (“Complaint”) as follows:

3 **INTRODUCTION**

4 1. Answering the first un-numbered paragraph of the Complaint, to the extent any of the
 5 allegations pertain to Defendant, Defendant admits that Plaintiff has filed the instant action against
 6 Defendant, but denies the remaining allegations.

7 2. Answering the second un-numbered paragraph of the Complaint, to the extent any of
 8 the allegations pertain to Defendant, Defendant denies the allegations.

9 3. Answering the third un-numbered paragraph of the Complaint, to the extent any of
 10 the allegations pertain to Defendant, Defendant admits that Plaintiff has filed the instant action
 11 against Defendant, but denies any inference that Defendant violated any statute.

12 **PARTIES**

13 4. Answering Paragraph 1 of the Complaint, the allegations consist of legal conclusions
 14 to which no response is required. To the extent a response is required, Defendant admits that it
 15 engages in debt collection activities.

16 5. Answering Paragraph 2 of the Complaint, the allegations consist of legal conclusions
 17 to which no response is required. Moreover, no response is required because the allegations, to the
 18 extent they are factual, do not pertain to Defendant.

19 6. Answering Paragraph 3 of the Complaint, the allegations consist of legal conclusions
 20 to which no response is required.

21 7. Answer Paragraph 4 of the Complaint, there are no factual allegations and no
 22 response is required.

23 **FACTS**

24 8. Answering Paragraph 5 of the Complaint, Defendant is without sufficient knowledge
 25 or information to form a belief as to the truth of the allegations, and on that basis, denies them.

26 9. Answering Paragraph 6 of the Complaint, Defendant is without sufficient knowledge
 27 or information to form a belief as to the truth of the allegations, and on that basis, denies them.

28 10. Answering Paragraph 7 of the Complaint, Defendant is without sufficient knowledge

or information to form a belief as to the truth of the allegations, and on that basis, denies them.

11. Answering Paragraph 8 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

12. Answering Paragraph 9 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

13. Answering Paragraph 10 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

14. Answering Paragraph 11 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

15. Answering Paragraph 12 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

16. Answering Paragraph 13 of the Complaint, to the extent the allegations pertain to Defendant, Defendant denies the allegations.

17. Answering Paragraph 14 of the Complaint, to the extent the allegations pertain to Defendant, Defendant denies the allegations.

FIRST CAUSE OF ACTION

Rosenthal Fair Debt Collection Practices Act

Defendant incorporates by reference its responses to Paragraphs 1 through 16 as though fully set forth herein.

18. Answering erroneously numbered Paragraph 10 of the Complaint, Defendant denies the allegations.

19. Answering erroneously numbered Paragraph 11 of the Complaint, Defendant denies the allegations.

20. Answering erroneously numbered Paragraph 12 of the Complaint, Defendant denies the allegations.

SECOND CAUSE OF ACTION

Telephone Consumer Protection Act

21. Answering erroneously numbered Paragraph 13 of the Complaint, Defendant denies the allegations.

22. Answering erroneously numbered Paragraph 14 of the Complaint, Defendant denies the allegations.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

23. Plaintiff fails to state a claim upon which relief can be granted against Defendant.

SECOND AFFIRMATIVE DEFENSE

24. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

THIRD AFFIRMATIVE DEFENSE

25. Plaintiff is barred from obtaining the relief sought in the Complaint by the doctrines of estoppel, waiver, unclean hands, laches, and/or other equitable doctrines.

FOURTH AFFIRMATIVE DEFENSE

26. Plaintiff's claims are barred in whole or in part because Plaintiff has failed to mitigate her alleged damages, if any.

FIFTH AFFIRMATIVE DEFENSE

27. Defendant expressly reserves any defenses that may be available to it under any applicable laws of other jurisdictions, in accordance with applicable choice of law rules.

SIXTH AFFIRMATIVE DEFENSE

28. Plaintiff's claims are barred in whole or in part because Plaintiff consented, ratified, or acquiesced to all alleged acts or omissions asserted in the Complaint.

SEVENTH AFFIRMATIVE DEFENSE

29. Defendant's conduct was privileged and/or justified.

EIGHTH AFFIRMATIVE DEFENSE

30. Plaintiff fails to allege facts sufficient for injunctive or equitable relief against

Defendant.

NINETH AFFIRMATIVE DEFENSE

31. Plaintiff has waived any and all claims, rights and demands made in the Complaint.

TENTH AFFIRMATIVE DEFENSE

32. Plaintiff provided prior express consent for the telephone calls at issue in this action.
47 U.S.C. § 227(b)(1)(A).

ELEVENTH AFFIRMATIVE DEFENSE

33. Plaintiff had an existing business relationship with Defendant for purposes of the
TCPA.

TWELFTH AFFIRMATIVE DEFENSE

34. Plaintiff's claims may be barred because any alleged acts or omissions of Defendant
giving rise to Plaintiff's claims, if any, were the result of an innocent mistake and/or bona fide error
notwithstanding reasonable procedures implemented by Defendant to avoid any such acts or
omissions. Defendant at all times acted in a reasonable manner in connection with the transactions
at issue in this action.

THIRTEENTH AFFIRMATIVE DEFENSE

35. Plaintiff's claims may be barred because the acts or omissions of which Plaintiff
complains have been approved and/or mandated, implicitly or expressly, by applicable statutes and
regulations.

FOURTEENTH AFFIRMATIVE DEFENSE

36. Plaintiff's claims may be barred because Defendant at all times complied in good
faith with all applicable statutes and regulations.

FIFTEENTH AFFIRMATIVE DEFENSE

37. Defendant specifically denies that it acted with any willfulness, oppression, fraud or
malice towards Plaintiff.

SIXTEENTH AFFIRMATIVE DEFENSE

38. Any harm alleged in the Complaint can be attributed to several causes, and the
damages for this harm, if any, should be apportioned among the various causes according to the

1 contribution of each cause to the harm sustained.

2 **SEVENTEENTH AFFIRMATIVE DEFENSE**

3 39. If Plaintiff suffered or sustained any loss, injury, damage or detriment, it was directly
4 and proximately caused and contributed to by the breach, conduct, acts, omissions, activities,
5 carelessness, recklessness, negligence, and/or intentional misconduct of others, and not by
6 Defendant.

7 **EIGHTEENTH AFFIRMATIVE DEFENSE**

8 40. If Plaintiff suffered or sustained any loss, injury, damage or detriment, it was directly
9 and proximately caused and contributed to by the intervening acts of others, and not by Defendant.

10 **NINETEENTH AFFIRMATIVE DEFENSE**

11 41. If Plaintiff prevails against Defendant, Defendant's liability is several and limited to
12 its own actionable segment of fault, if any.

13 **TWENTIETH AFFIRMATIVE DEFENSE**

14 42. Defendant reserves the right to compel arbitration to the extent available by contract.

15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 43. Defendant is entitled to a set-off against any award to Plaintiff.

17 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

18 44. Defendant specifically gives notice that it intends to rely upon such other defenses as
19 may become available by law, or pursuant to statute, or during any further discovery proceedings of
20 this case, and hereby reserves the right to amend its Answer and assert such defenses.

21
22 WHEREFORE, Defendant prays for judgment as follows:

- 23 1. That Plaintiff takes nothing by reason of the Complaint;
- 24 2. For its costs of suit herein;
- 25 3. For attorney's fees according to proof; and
- 26 4. For such other and further relief as this Court may deem just and proper.

1 DATED: January 30, 2013.

2 YU MOHANDESI LLP

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4 By /s/ B. Ben Mohandesi
5 B. Ben Mohandesi
6 Jordan Yu
7 Attorneys for Defendant
8 LVNV Funding, LLC

9 **DEMAND FOR JURY TRIAL**

10 Defendant demands a trial by jury in this action.

11 DATED: January 30, 2013.

12 YU MOHANDESI LLP

13 By /s/ B. Ben Mohandesi
14 B. Ben Mohandesi
15 Jordan Yu
16 Attorneys for Defendant
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YU | MOHANDESI LLP

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Yu | Mohandesi LLP, 1055 W. 7th Street, Suite 2150, Los Angeles, CA 90017. On January 30, 2013, I served the following document(s) by the method indicated below:

DEFENDANT LVNV FUNDING LLC'S NOTICE OF RELATED CASES

	by transmitting via facsimile on this date the document(s) listed above to the fax number(s) set forth below. The transmission was completed before 5:00 p.m. and was reported complete and without error. Service by fax was ordered by the Court. The transmitting fax machine complies with Cal.R.Ct 2003(3).
X	by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles County, California addressed as set forth below. I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.
	by placing the document(s) listed above in a sealed envelope(s) and by causing personal delivery of the envelope(s) to the person(s) at the address(es) set forth below.
	by having the document(s) listed above hand-delivered to the person(s) at the address(es) set forth below.
	by placing the document(s) listed above in a sealed envelope(s) and consigning it to an express mail service for guaranteed delivery on the next business to the address(es) set forth below.
	by emailing the document(s) listed above to the person(s) at the address(es) set forth below.

Counsel for Plaintiff

Miguel Soto
Law Office of Miguel Soto
1400 Coleman Ave., Ste. D12-1
Santa Clara, CA 95050

I declare under penalty of perjury under the laws of California and the United States that the above is true and correct. Executed on January 30, 2013, at Los Angeles County, California.


Jordan Yu